

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

641

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

August 14, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

We are deeply disturbed by the Federal Communications Commission's (FCC) Inspector General's Report of Investigation into the alleged distributed denial-of-service (DDoS) attacks on the Electronic Comment Filing System (ECFS) during the net neutrality public comment period. As we long suspected, the Inspector General (IG) confirmed that no such attack occurred—rather, the FCC's system simply was unprepared to handle the volume of pro-net neutrality commenters inspired by John Oliver's report.¹ Moreover, the IG found that you made a series of misrepresentations to Congress about the event, which were corrected for the first time in the IG's Report.²

Given the significant media, public, and Congressional attention this alleged cyberattack received for over a year, it is hard to believe that the release of the IG's Report was the first time that you and your staff realized that no cyberattack occurred. Such ignorance would signify a dereliction of your duty as the head of the FCC, particularly due to the severity of the allegations and the blatant lack of evidence. Therefore, we want to know when you and your staff first learned that the information the Commission shared about the alleged cyberattack was false.

It is troubling that you allowed the public myth created by the FCC to persist and your misrepresentations to remain uncorrected for over a year. This is despite repeated requests by members of this Committee — as recently as July 25, 2018 in our oversight hearing — to

¹ Federal Communications Commission, Office of Inspector General, *Alleged Multiple Distributed Denial-Of-Service Attacks Involving the FCC's Electronic Comment Filing System* (June 20, 2018) (Inspector General's Report).

² Inspector General's Report, pgs. 17-20, 21-25.

provide additional information documenting the purported cyberattack.³ To the extent that you were aware of the misrepresentations prior to the release of the Report and failed to correct them, such actions constitute a wanton disregard for Congress and the American public.

Given the very serious nature of these omissions and misrepresentations, Congress and the public deserve more information. We ask that you answer the following questions:

1. The FCC's May 8, 2017 press release states that the May 7-8, 2017 ECFS failure was caused by a DDoS attack.⁴ After May 8, 2017, when did you first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?
2. The IG's Report documents an exchange between FCC Chief of Staff Matthew Berry and the FCC's then-Chief Information Officer, where Mr. Berry asks for confirmation that the attack was a deliberate attempt to tie up the system and not John Oliver viewers attempting to submit comments.⁵ After May 8, 2017, when did Mr. Berry first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?
3. Why did you not issue a correction of the agency's previous public statements about the incident once you became aware they were inaccurate?
4. Why did you not seek to correct your misrepresentations to Congress either publicly or on a confidential basis once you became aware they were inaccurate?
5. In your August 6, 2018 statement about the IG's Report, you indicate that on request of the IG's office, you have not publicly discussed the investigation.⁶ Did the IG's office specifically ask that you not correct your misrepresentations to Congress? Did the IG's office specifically ask that you not disclose to the public that previous FCC statements alleging a cyberattack were unfounded? Please provide copies of all such written requests and guidance or memorialization of an oral request from the IG's office.

³ See, e.g. House Committee on Energy and Commerce, *Oversight and Reauthorization of the Federal Communications Commission*, 115th. Cong. (July 25, 2017); House Committee on Energy and Commerce, *Oversight of the Federal Communications Commission*, 115th Cong. (Oct. 25, 2017); House Committee on Energy and Commerce, *Oversight of the Federal Communications Commission*, 115th Cong. (July 25, 2018); Letter from Reps. Jerry McNerney and Debbie Dingell, to FCC Chairman Ajit Pai (Dec. 11, 2017).

⁴ Federal Communications Commission, *FCC CIO Statement on Distributed Denial-of-Service Attacks on FCC Electronic Comment Filing System* (May 8, 2017).

⁵ Inspector General's Report at pg. 20.

⁶ Federal Communications Commission, *Chairman Pai Statement on Office of Inspector General Report on FCC Comment System* (Aug. 6, 2018).

6. When did you or your office receive an initial draft of the IG's report? Did you request any edits or changes to the report? If so, please provide documentation of those requests.
7. Why have you still not corrected the FCC's previous statements to the public and Congress?
8. Are there other oral or written statements you have made to Congress that are misrepresentations or inaccurate and have not been corrected? If so, please provide a written correction of such statements.

Please provide complete written responses to these inquiries by August 28, 2018. We appreciate your attention to this important matter. Should you have any questions, please contact Gerald Leverich of the Democratic Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Ranking Member



Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology



Jerry McNerney
Member of Congress



Debbie Dingell
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 30, 2018

The Honorable Mike Doyle
Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Doyle:

I have received your letter regarding the Office of Inspector General's independent investigation into the incident involving the FCC's Electronic Comment Filing System (ECFS). Below please find responses to your particular questions:

1. The FCC's May 8, 2017 press release states that the May 7-8, 2017 ECFS failure was caused by a DDoS attack. After May 8, 2017, when did you first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?

Response: January 23, 2018.

2. The IG's Report documents an exchange between FCC Chief of Staff Matthew Berry and the FCC's then-Chief Information Officer, where Mr. Berry asks for confirmation that the attack was a deliberate attempt to tie up the system and not John Oliver viewers attempting to submit comments. After May 8, 2017, when did Mr. Berry first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?

Response: On January 23, 2018, Mr. Berry was told by the Office of Inspector General that it had concluded that a DDoS attack had not occurred. At some point shortly before that meeting, the Office of Inspector General told him generally that Mr. Bray had not served the agency well and that it would soon be providing him with information relevant to that assertion. That information was provided during the meeting on January 23, 2018.

3. Why did you not issue a correction of the agency's previous public statements about the incident once you became aware they were inaccurate?

Response: The Office of the Inspector General asked us not to discuss its investigation with anyone. It had referred facts collected in this investigation to the Department of Justice and was working with the Department on the possibility of bringing criminal charges against Mr. Bray. The Office of Inspector General was concerned that disclosure

could jeopardize that investigation, and I accommodated that concern by acceding to its request.

4. Why did you not seek to correct your misrepresentations to Congress either publicly or on a confidential basis once you became aware they were inaccurate?

Response: See previous response.

5. In your August 6, 2018 statement about the IG's Report, you indicate that on request of the IG's office, you have not publicly discussed the investigation. Did the IG's office specifically ask that you not correct your misrepresentations to Congress? Did the IG's office specifically ask that you not disclose to the public that previous FCC statements alleging a cyberattack were unfounded? Please provide copies of all such written requests and guidance or memorialization of an oral request from the IG's office.

Response: With respect to the first two questions, see response to question 3. With respect to the third question, this instruction was conveyed orally.

6. When did you or your office receive an initial draft of the IG's report? Did you request any edits or changes to the report? If so, please provide documentation of those requests.

Response: We received the Office of the Inspector General's report on June 20, 2018. After reading the report, I requested the opportunity to provide additional information to the Office of the Inspector General. The Office of the Inspector General suggested that I submit a statement to be included with the report, and that is what I did. This statement was included in the report without edits.

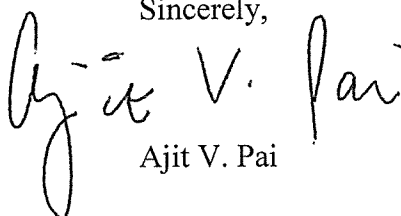
7. Why have you still not corrected the FCC's previous statements to the public and Congress?

Response: I issued a public statement regarding the Office of Inspector General's report, and the Commission has brought that report to the attention of Congress.

8. Are there other oral or written statements you have made to Congress that are misrepresentations or inaccurate and have not been corrected? If so, please provide a written correction of such statements.

Response: Not to my knowledge.

Sincerely,

A handwritten signature in black ink, appearing to read "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being the most prominent part.

Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 30, 2018

The Honorable Debbie Dingell
U.S. House of Representatives
116 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Dingell:

I have received your letter regarding the Office of Inspector General's independent investigation into the incident involving the FCC's Electronic Comment Filing System (ECFS). Below please find responses to your particular questions:

1. The FCC's May 8, 2017 press release states that the May 7-8, 2017 ECFS failure was caused by a DDoS attack. After May 8, 2017, when did you first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?

Response: January 23, 2018.

2. The IG's Report documents an exchange between FCC Chief of Staff Matthew Berry and the FCC's then-Chief Information Officer, where Mr. Berry asks for confirmation that the attack was a deliberate attempt to tie up the system and not John Oliver viewers attempting to submit comments. After May 8, 2017, when did Mr. Berry first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?

Response: On January 23, 2018, Mr. Berry was told by the Office of Inspector General that it had concluded that a DDoS attack had not occurred. At some point shortly before that meeting, the Office of Inspector General told him generally that Mr. Bray had not served the agency well and that it would soon be providing him with information relevant to that assertion. That information was provided during the meeting on January 23, 2018.

3. Why did you not issue a correction of the agency's previous public statements about the incident once you became aware they were inaccurate?

Response: The Office of the Inspector General asked us not to discuss its investigation with anyone. It had referred facts collected in this investigation to the Department of Justice and was working with the Department on the possibility of bringing criminal charges against Mr. Bray. The Office of Inspector General was concerned that disclosure could jeopardize that investigation, and I accommodated that concern by acceding to its request.

4. Why did you not seek to correct your misrepresentations to Congress either publicly or on a confidential basis once you became aware they were inaccurate?

Response: See previous response.

5. In your August 6, 2018 statement about the IG's Report, you indicate that on request of the IG's office, you have not publicly discussed the investigation. Did the IG's office specifically ask that you not correct your misrepresentations to Congress? Did the IG's office specifically ask that you not disclose to the public that previous FCC statements alleging a cyberattack were unfounded? Please provide copies of all such written requests and guidance or memorialization of an oral request from the IG's office.

Response: With respect to the first two questions, see response to question 3. With respect to the third question, this instruction was conveyed orally.

6. When did you or your office receive an initial draft of the IG's report? Did you request any edits or changes to the report? If so, please provide documentation of those requests.

Response: We received the Office of the Inspector General's report on June 20, 2018. After reading the report, I requested the opportunity to provide additional information to the Office of the Inspector General. The Office of the Inspector General suggested that I submit a statement to be included with the report, and that is what I did. This statement was included in the report without edits.

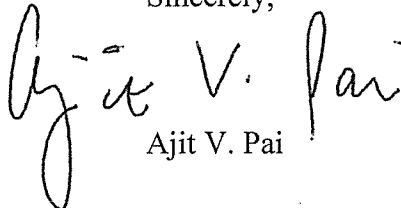
7. Why have you still not corrected the FCC's previous statements to the public and Congress?

Response: I issued a public statement regarding the Office of Inspector General's report, and the Commission has brought that report to the attention of Congress.

8. Are there other oral or written statements you have made to Congress that are misrepresentations or inaccurate and have not been corrected? If so, please provide a written correction of such statements.

Response: Not to my knowledge.

Sincerely,



Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 30, 2018

The Honorable Jerry McNerney
U.S. House of Representatives
2265 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman McNerney:

I have received your letter regarding the Office of Inspector General's independent investigation into the incident involving the FCC's Electronic Comment Filing System (ECFS). Below please find responses to your particular questions:

1. The FCC's May 8, 2017 press release states that the May 7-8, 2017 ECFS failure was caused by a DDoS attack. After May 8, 2017, when did you first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?

Response: January 23, 2018.

2. The IG's Report documents an exchange between FCC Chief of Staff Matthew Berry and the FCC's then-Chief Information Officer, where Mr. Berry asks for confirmation that the attack was a deliberate attempt to tie up the system and not John Oliver viewers attempting to submit comments. After May 8, 2017, when did Mr. Berry first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?

Response: On January 23, 2018, Mr. Berry was told by the Office of Inspector General that it had concluded that a DDoS attack had not occurred. At some point shortly before that meeting, the Office of Inspector General told him generally that Mr. Bray had not served the agency well and that it would soon be providing him with information relevant to that assertion. That information was provided during the meeting on January 23, 2018.

3. Why did you not issue a correction of the agency's previous public statements about the incident once you became aware they were inaccurate?

Response: The Office of the Inspector General asked us not to discuss its investigation with anyone. It had referred facts collected in this investigation to the Department of Justice and was working with the Department on the possibility of bringing criminal charges against Mr. Bray. The Office of Inspector General was concerned that disclosure could jeopardize that investigation, and I accommodated that concern by acceding to its request.

4. Why did you not seek to correct your misrepresentations to Congress either publicly or on a confidential basis once you became aware they were inaccurate?

Response: See previous response.

5. In your August 6, 2018 statement about the IG's Report, you indicate that on request of the IG's office, you have not publicly discussed the investigation. Did the IG's office specifically ask that you not correct your misrepresentations to Congress? Did the IG's office specifically ask that you not disclose to the public that previous FCC statements alleging a cyberattack were unfounded? Please provide copies of all such written requests and guidance or memorialization of an oral request from the IG's office.

Response: With respect to the first two questions, see response to question 3. With respect to the third question, this instruction was conveyed orally.

6. When did you or your office receive an initial draft of the IG's report? Did you request any edits or changes to the report? If so, please provide documentation of those requests.

Response: We received the Office of the Inspector General's report on June 20, 2018. After reading the report, I requested the opportunity to provide additional information to the Office of the Inspector General. The Office of the Inspector General suggested that I submit a statement to be included with the report, and that is what I did. This statement was included in the report without edits.

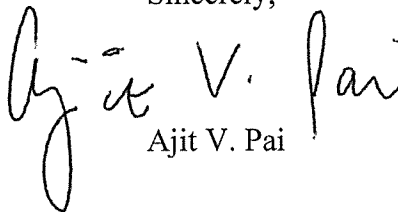
7. Why have you still not corrected the FCC's previous statements to the public and Congress?

Response: I issued a public statement regarding the Office of Inspector General's report, and the Commission has brought that report to the attention of Congress.

8. Are there other oral or written statements you have made to Congress that are misrepresentations or inaccurate and have not been corrected? If so, please provide a written correction of such statements.

Response: Not to my knowledge.

Sincerely,



Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 30, 2018

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Pallone:

I have received your letter regarding the Office of Inspector General's independent investigation into the incident involving the FCC's Electronic Comment Filing System (ECFS). Below please find responses to your particular questions:

1. The FCC's May 8, 2017 press release states that the May 7-8, 2017 ECFS failure was caused by a DDoS attack. After May 8, 2017, when did you first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?

Response: January 23, 2018.

2. The IG's Report documents an exchange between FCC Chief of Staff Matthew Berry and the FCC's then-Chief Information Officer, where Mr. Berry asks for confirmation that the attack was a deliberate attempt to tie up the system and not John Oliver viewers attempting to submit comments. After May 8, 2017, when did Mr. Berry first become aware that the May 7-8, 2017 ECFS failure may not have been caused by a DDoS attack?

Response: On January 23, 2018, Mr. Berry was told by the Office of Inspector General that it had concluded that a DDoS attack had not occurred. At some point shortly before that meeting, the Office of Inspector General told him generally that Mr. Bray had not served the agency well and that it would soon be providing him with information relevant to that assertion. That information was provided during the meeting on January 23, 2018.

3. Why did you not issue a correction of the agency's previous public statements about the incident once you became aware they were inaccurate?

Response: The Office of the Inspector General asked us not to discuss its investigation with anyone. It had referred facts collected in this investigation to the Department of Justice and was working with the Department on the possibility of bringing criminal charges against Mr. Bray. The Office of Inspector General was concerned that disclosure could jeopardize that investigation, and I accommodated that concern by acceding to its request.

4. Why did you not seek to correct your misrepresentations to Congress either publicly or on a confidential basis once you became aware they were inaccurate?

Response: See previous response.

5. In your August 6, 2018 statement about the IG's Report, you indicate that on request of the IG's office, you have not publicly discussed the investigation. Did the IG's office specifically ask that you not correct your misrepresentations to Congress? Did the IG's office specifically ask that you not disclose to the public that previous FCC statements alleging a cyberattack were unfounded? Please provide copies of all such written requests and guidance or memorialization of an oral request from the IG's office.

Response: With respect to the first two questions, see response to question 3. With respect to the third question, this instruction was conveyed orally.

6. When did you or your office receive an initial draft of the IG's report? Did you request any edits or changes to the report? If so, please provide documentation of those requests.

Response: We received the Office of the Inspector General's report on June 20, 2018. After reading the report, I requested the opportunity to provide additional information to the Office of the Inspector General. The Office of the Inspector General suggested that I submit a statement to be included with the report, and that is what I did. This statement was included in the report without edits.

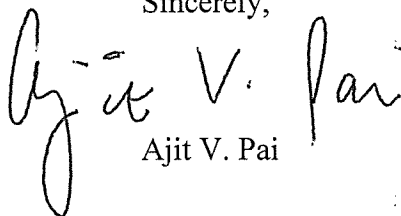
7. Why have you still not corrected the FCC's previous statements to the public and Congress?

Response: I issued a public statement regarding the Office of Inspector General's report, and the Commission has brought that report to the attention of Congress.

8. Are there other oral or written statements you have made to Congress that are misrepresentations or inaccurate and have not been corrected? If so, please provide a written correction of such statements.

Response: Not to my knowledge.

Sincerely,

A handwritten signature in black ink, appearing to read "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being the most prominent part.

Ajit V. Pai